IN THE

Supreme Court of the United States.

MAR 4 1937
CHARLES ELMORE CRO
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OCTOBER TERM, 1936. No. 531.

JOHN BOSEMAN, *Petitioner,*

v.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, *Respondent.*

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR CONNECTICUT GENERAL LIFE INSURANCE COMPANY.

A typical "group" life insurance policy (covering thousands of employees in many States) can not be governed by the varied, and frequently conflicting, laws of the States in which the shifting employees may happen to live from time to time. (Royal Arcanum v. Green, 237 U. S. 531, 542; Modern Woodmen v. Mixer, 267 U. S. 544, 551.)

The policy should be governed by the laws of Pennsylvania, where the policy was delivered, from which State all transactions were carried on by mail between the Home Offices of the Employer in Pennsylvania, and the Insurance Company in Connecticut, and which both parties agreed should govern the contract. (Aetna Life v. Dunken, 266 U. S. 389, 399; Hartford Ind. Co. v. Delta Co., 292 U. S. 143, 149.)

The fact that a Texas employee of a subsidiary company authorized the subsidiary to make "proper" deductions from his wages so as to secure inclusion among the "certain employees" insured, and the subsidiary's remittance of such deductions to the Employer [parent company] in Pennsylvania (and other acts between the employee and the subsidiary) do not make the laws of Texas applicable to the policy (Id.).

This case does not involve a State's power to tax, or the question of "doing business"; and Palmetto Ins. Co. v. Conn., 272 U. S. 295 is not applicable.

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[References Required by Rules 12 and 27.]

OPINION BELOW: *Connecticut General Life* v. *Boseman*, 84 F. (2d) 701.

JURISDICTIONAL AUTHORITY: Judicial Code, § 240(a), as amended by Act of February 13, 1925.

STATUTES INVOLVED: Purdon's Penn. Stat. Ann. Title 40, Sec. 532; Rev. Civ. Stat. Texas, Art. 5546.

DATE OF JUDGMENT, ETC.: Dec. 26, 1935 (R. 47-50).

NATURE OF THE CASE, RULINGS, ETC.: Boseman did not notify the insurance company of his disability within the 60 days required by a "group" policy (R. 43),—which requirement was *valid* under the laws of *Pennsylvania*, but void under the laws of Texas (R. 43-44).

The District Court held that the policy was a *Texas* contract; and that the limitation was void (R. 43-44).

The C. C. A. (5th) *reversed* the District Court, and held that the policy was a *Pennsylvania* contract, and that the failure to give the required notice barred recovery (R. 240, 241).

Certiorari was granted December 21, 1936 (R. 254).

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BRIEF FOR THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY

The sole question involved is whether Pennsylvania law or Texas law applies to a "group" insurance Policy G-5039-R, which provides that no claim for total permanent disability shall be paid unless notice of "such disability" be given during the insured's employment, **"or within 60 days thereafter"**—a time limitation that is valid in Pennsylvania but void in Texas (R. 196-7, 234-5).

The answer depends upon whether the Connecticut General made a Texas contract (or otherwise subjected itself to the Texas laws) so that Texas laws (instead of Pennsylvania laws) apply to the policy.*

* All acts of the contracting parties were done in *Pennsylvania* and *Connecticut;* and the policy itself expressly provides (R. 85):

"This contract is issued and delivered in the City of Pittsburgh, in the Commonwealth of Pennsylvania and is governed by the laws of that Commonwealth."

RELEVANT STATUTES

The relevant statutes are in the Appendix, p. 44 *infra.*

1. TEXAS' REVISED CIVIL STATUTES, Art. 5546, very similar to Art. 5545 involved in *Home Ins. Co.* v. *Dick,* 281 U. S. 397; Art. 4736, 5054 (formerly Arts. 4746, 4950 involved in *Aetna Life Ins. Co.* v. *Dunken,* 266 U. S. 389); Art. 5056; Art. 4764a.

2. PURDON'S PENNSYLVANIA STATUTES ANN., Title 40, Section 532.

Nature of "group" insurance*

"Group" insurance is a form of modern paternalistic insurance, by which an Insurance Company issues a "group" policy to a railroad, industrial or other large employer of labor, insuring all (or certain classes) of the Employer's employees against death (and in some cases against various forms of disability) for which the Employer pays to the Insurance Company a premium, the aggregate amount of which is determined by the *ages* of the employees and the *amounts* of insurance in force (which amounts, in turn, are generally determined by a sliding scale, depending upon the employee's salary and length of service).

Sometimes the Employer bears the entire cost of the insurance, in which event it is called "*non*-contributory" group insurance; or in other cases, the Employer requires his employees (as a condition of being included in the list of employees so insured) to pay to him certain sums (based upon a private scale agreed upon with the Employer), which go to recoup the Employer in part for

* See *Duval* v. *Metropolitan Life Ins. Co.,* 82 N. H. 543; *Conn. General Life Ins. Co.* v. *Speer,* 185 Ark. 615, 616-618; *Boseman's* Case, C. C. A. (5th), R. 238.

the premium he has paid to the Insurance Company—in which cases it is called "contributory" group insurance; and whatever the employee pays to his Employer is commonly called his "contribution".

The Insurance Company assumes and treats as insured under its policy all those employees which the Employer, from time to time, designates.

STATEMENT OF THE CASE

1. In 1916, Boseman began to work at Port Arthur, Texas, for the Gulf Refining Co. (hereafter called the Refining Co.)—a subsidiary of a *Pennsylvania corporation, i. e.*, Gulf Oil Corporation (hereafter called Gulf Oil); and Boseman continued so to work in Texas for sixteen years until his discharge on October 8, 1932 (R. 92, 101-109, 162).*

2. In early March, 1932, Gulf Oil and Connecticut General began (and completed) negotiations solely in *Pennsylvania*, for (*a*) cancelling on March 31 (midnight) the two existing "group" policies; and, in lieu thereof, (*b*) issuing in *Pennsylvania* a new "group" Policy G-5039-R effective April 1, 1932, at 12:01 A. M. (R. 136-7).

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* Boseman had previously become insured under two earlier "group" policies (dated G-5039 in 1918 and G-5545 in 1925), which had been negotiated for, executed and delivered solely in Pennsylvania and Connecticut (R. 128-135, 145-148). Their terms are neither shown in the Record nor are they material here, as both were cancelled on March 31, 1932 (R. 99, 127-129, 135-6, 146-8).

They are now mentioned only because they are referred to in the subsequent Policy G-5039-R (and in the certificate R-23558 issued thereunder) on which policy the present suit is based (R. 51, 53, 67, 72, 77).

On March 7, Boseman signed and delivered to Refining Co., at Port Arthur, Texas, a "payroll deduction order"* (so called in the Policy and in the Record), by which Boseman agreed that his then existing insurance protection under the two old policies should be cancelled as of March 31; contingently released any claim thereunder as of March 31; applied for "group" insurance as of April 1, in the amount (dependent on salary and length of service) provided for in the proposed new "group" Policy G-5039-R; and, for the future, he authorized the Gulf Oil and/or the Refining Co.,

> "*to deduct* in advance the proper amount per month from my pay to apply toward the premium of said [new] insurance" (R. 99-100, 107).

Boseman thus "ratified" in advance what the Gulf Oil was proposing to do.

Connecticut General had nothing** whatever to do with that "payroll deduction order" which Boseman thus ex-

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* Apparently in anticipation of the proposed plan, and in order to establish his "eligibility" thereunder, so as to secure at the earliest moment the benefit of the expected new policy, and thus avoid any "break" in the continuity of his insurance protection. He had executed a similar "payroll deduction order" in connection with his prior insurance in 1929 (R. 99).

** Subsequently, G-5039-R did permissively provide that the "certain employees" insured thereunder would automatically include any employee who evidenced his "election of insurance" "by completing any form of payroll deduction order approved by the Employer"—which Boseman had already done in advance (R. 73, 99-100, 107). Boseman's Petition for *Certiorari* (which is the only Brief Boseman has filed in this Court) is quite erroneous in its assertion (pp. 11, 18) that Connecticut General required Boseman to execute a release, etc., or to do anything else.

Connecticut General never *required* Boseman to do anything, nor *prescribed* any conditions precedent.

It permissively agreed that all employees should be considered as among the "certain employees" insured, "by completing *any form* of payroll deduction order approved by the Employer" (R. 73)—which is a very different thing from Boseman's assertion that Connecticut General *required* Boseman to release it or to do anything else. Of course, Connecticut General had to be notified by Gulf Oil of the names of the persons insured, but that was a requirement specifically imposed on Gulf Oil (R. 81), and not required by Connecticut General of Boseman or any other employee.

ecuted and delivered to Refining Co. in Texas, even *before* Connecticut General had received *in Pennsylvania* Gulf Oil's application for the issuance of a new policy (R. 157; Cf. R. 100-1, 107, 119, 124, 131-2). The "payroll deduction order" was a purely private arrangement between Refining Co. (and perhaps Gulf Oil, R. 100) and Boseman, by which method alone could Boseman qualify (*a*) to become one of the favored "certain employees" insured under the anticipated G-5039-**R** and (*b*) to be so designated by Gulf Oil (R. 67, 81). This "payroll deduction order" never belonged to, was never in the possession of, and never was delivered to, Connecticut General; but it always remained in the possession of, and as a part of the permanent corporate records of, the Refining Co. (R. 98, 100).*

3. On March 15, Gulf Oil signed and delivered to Connecticut General *in Pennsylvania* a written application (1) to cancel the two former policies G-5039 and G-5545 as of March 31; (2) to issue in lieu thereof a new policy G-5039-**R** effective April 1, insuring only those employees who had complied with its terms; and (3) that the new policy G-5039-**R** be issued in Pennsylvania and governed by its laws (R. 86, 135-138).

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* The C. C. A. thus aptly described the effect of Boseman's execution of the "pay-roll deduction order" (R. 238-9):

"The insurance as to any employe is perfect so soon as eligibility and his election concur, the policy being in force. Notice to the insurer is not a prerequisite, though it is to be given in due course. Boseman was eligible from the beginning, and elected to take the insurance *before the policy was issued by signing in advance the necessary pay deduction order to his employer*. His insurance waited only on the issuance of the policy and became effective instantly after and because of that act.

On March 15, Connecticut General accepted, *in Pennsylvania*, Gulf Oil's application for a cancellation of the old policies, and for the issuance of a new policy G-5039-R as of midnight March 31-April 1, 1932 (R. 86, 99-100, 129, 136-7, 146-7).

Connecticut General then signed *in Connecticut* the new "group" policy G-5039-R, dated April 1, 1932, "for a term of one year from April 1, 1932, 12:01 A. M. Standard Time at Pittsburgh"; and delivered it *in Pennsylvania* to Gulf Oil (R. 137).

On March 31 (midnight), the two old policies lapsed and were cancelled; all future liability thereunder ceased; and by the terms of his "payroll deduction order" Boseman had accepted, in advance as of March 31 (*a*) such cancellation of his former insurance protection thereunder, and, in lieu thereof, (*b*) future insurance protection under the new policy G-5039-R (R. 86, 99-100, 129, 136-7, 146-7).

On April 1, at 12:01 A. M., the new "group" policy G-5039-R went into effect (R. 67, 91, 123, 137-8).

4. All negotiations and every act done by the Gulf Oil or by the Connecticut General took place *solely in Pennsylvania or Connecticut* (R. 137-8); and the new policy G-5030-R expressly provided (in accordance with the Gulf Oil's request in its application) that it should be governed by the laws of Pennsylvania (R. 85-86, p. 1, note *supra*).

Policy G-5039-R

5. Policy G-5039-R provided (R. 67-86):

I. Gulf Oil pays to Connecticut General a monthly premium in advance, based on the respective ages of the employees insured and on the amounts of their insurance (R. 78, 80).

II. Connecticut General "insures certain employees" of Gulf Oil and its subsidiaries against death, and against permanent total disability before age 60, for an "amount of insurance" on a sliding scale, dependent upon the employee's (*a*) years of service and (*b*) amount of salary (R. 67-72, 74-5), subject to specified rules of eligibility (R. 72-73)*—but without any limitation as to the *geographical location* of such employees, who were scattered throughout the various States and foreign countries (R. 134-5, 142).

III. "**Election of insurance.** An employee may elect insurance under this policy by completing *any form of payroll deduction order approved by the Employer*" (R. 73).

"**Employees insured.** Each employee electing the Insurance *before** becoming eligible, *will be insured automatically on the day he becomes eligible*" (Id.).

IV. "**Individual certificate.**** The Company *will issue to the Employer* for each insured employee an individual certificate. **This certificate will in no way void any of the terms and conditions outlined in the policy but will show the insurance protection to which the employee is entitled,** to whom payable, and the following conversion privilege" [a privilege immaterial here] (R. 84).

V. Each month, or within a reasonable time thereafter, Gulf Oil must notify Connecticut General of the termination

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* "*Before* becoming eligible" under G-5039-R, Boseman had, on March 7, elected insurance thereunder by executing the advance form of "payroll deduction order" approved and presented to him by the Refining Co. (p. 4, *supra;* R. 73). By the express terms of G-5039-R, any employee "electing the insurance *before* becoming eligible, will be insured automatically *on the day he becomes eligible*" (R. 73), to-wit: in Boseman's case, April 1, 1932, because he then *became* "eligible" under SCHEDULE B, G-5039-R, because he was (1) "insured under Policy G-5545 on March 31, 1932", and (2) an "employee in service April 1, 1932" (R. 72, 98-99, 101, 147-8, 161-3).

** The Pennsylvania Law required such a clause to be inserted in every "group" life policy (Purdon's Penn. Stat. Ann. Title 40, Section 532. See Appendix, p. 47 *infra*).

of employment of any insured employee; and upon such notice being given, the *insurance terminates* as of the date that the *employment* terminated (R. 81).

VI. The clause entitled **"Incontestability"** expressly provided that no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of his employment, *unless* such employee gave written notice to the Company *during said period of employment "or within 60 days thereafter"* (R. 85).

VII. This contract is issued and delivered in Pennsylvania, and is governed by the laws of Pennsylvania (R. 85).

In strict compliance with Pennsylvania's "standard provision" law (Appendix, p. 47, *infra*), (*a*) Policy G-5039-R embodied the above provision for "Individual certificate" (R. 84); and (*b*) a copy of Gulf Oil's application was attached to and made a part of the policy (R. 85-86). As no employee made any individual application to Connecticut General, the "standard provision" regarding "the individual applications, *if any*, of the employees insured" did not apply to G-5039-R.

On April 1, 1932, at 12:01 A. M., Boseman, *eo instanti*, thus became "insured automatically" * for $4,000† under G-5039-R. This insurance would continue in force (*a*) so long as Gulf Oil paid the monthly premiums ("Renewal" R. 78; "Grace" R. 79), and (*b*) until Boseman's employment terminated or he cancelled his insurance (R. 81-82) —regardless of whether anything was, or was not, deducted from Boseman's wages [C. C. A. (5th) so held

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* See pp. 4, 5, note, *supra*.

† $4,000 was the automatic result under SCHEDULE B, of (*a*) Boseman's salary being "less than $150 per month", (*b*) his completed years of continuous service" being *more* than seven years (*i. e.* sixteen years); (R. 14, 75, 147, 148, 150).

In the event of Boseman's total permanent disability before age 60, Connecticut General agreed to pay him the full $4,000 insurance (Cf. "Benefits", R. 70-71).

R. 240-1]. As a third-party-beneficiary of Gulf Oil's contract with Connecticut General, the existence of Boseman's insurance did not depend upon either (1) future deductions from his wages, or (2) his receipt of an individual certificate, as Connecticut General's obligation to Boseman was *already complete* upon the delivery in Pennsylvania of G-5039-R because it had *insured the "group"*, to which "group" of "certain employees" Boseman's March 2 private agreement with Refining Co. "automatically" admitted him on April 1 (R. 73; pp. 4, 5, note, *supra*).

Employees of Gulf Oil (and of its subsidiaries) located all over the United States and in foreign countries (constantly being transferred from one State or foreign country to another State or country), were similarly insured (R. 134-5, 142).

6. Shortly after April 1, Gulf Oil, from its Home Office *in Pennsylvania*, notified Connecticut General, at its Home Office *in Connecticut*, that, among other employees, Boseman had, on April 1, become insured for $4,000 under G-5039-R (R. 150).

On April 15, Gulf Oil *mailed its own check* from its Home Office *in Pennsylvania* to Connecticut General's Home Office *in Connecticut*, in advance payment of the entire first (April) monthly premium upon policy G-5039-R, and upon all the insurance thereunder (including $3 for Boseman's insurance; R. 124); and it similarly mailed its own checks on the first of each month thereafter in advance payment, as required by the policy, of such monthly premiums due from May to December, both inclusive (R. 92, 124, 138-9, 146, 149, 150).

On May 1, or thereabouts, Connecticut General issued, *in Connecticut*, and delivered to Gulf Oil, *in Pennsylvania*,

Certificate R-23558 evidencing Boseman's $4,000 insurance as specifically required by G-5039-R (R. 51-61, 118-9, 139, 150-1). The certificate recited that

> "subject to the terms and conditions of said policy numbered G-5039-R executed and delivered in the Commonwealth of Pennsylvania"

Connecticut General certified that Boseman was insured under Schedule B for $4000 (R. 52). Subsequently, Gulf Oil sent such Certificate R-23558 to the Refining Co., which, in turn, delivered the certificate to Boseman at Port Arthur, Texas (R. 96, 97, 101, 106, 107, 112). Boseman offered this certificate R-23558 in evidence for the *sole purpose* of *"identifying"* Boseman "as one of the insured under group policy G-5039-R"; and it is not in evidence as the contract sued on (R. 51).

Refining Co. deducted (in Texas) $2.40 a month from Boseman's pay during the months April-October, both inclusive, aggregating $16.80 (R. 101, 107, 109, 112). Refining Co. sent Boseman's $2.40 monthly deductions [totaling $16.80], together with a large number of other deductions from other employees' pay, to Gulf Oil in Pennsylvania (R. 91, 97-98), whereby Gulf Oil partially recouped itself for the monthly premium payments which it had *previously made* to Connecticut General.

In Boseman's case, Gulf Oil thereby bore 20% (60¢ per month) of the cost of Boseman's insurance—Boseman bearing the remaining 80% of the cost ($2.40 per month) (R. 92, 109, 124). This again was a matter of purely internal arrangement between Gulf Oil, Refining Co. and the latter's employee Boseman, with which Connecticut General had absolutely no connection.

7. Prior to October 8, 1932, Boseman became "permanently and totally disabled" from syphillis, diabetes, etc. (R. 89, 90, 109, 112, 114, 115).*

On October 8, 1932, Boseman was discharged; his employment terminated (R. 104, 107); and his insurance was thereupon automatically "cancelled** upon termination of employment" (R. 81).

Boseman became then [October 8, 1932] entitled immediately to recover his full $4,000 insurance (R. 70, 71; p. 8, note, *supra*), *provided* he gave written notice of his disability to Connecticut General within 60 days after October 8, to-wit: by December 8, 1932, as expressly required by the following "Incontestability" clause of

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* Connecticut General disputed the disability (R. 159-165); but the jury's verdict for the plaintiff has foreclosed that question of fact, and Boseman's "permanent total disability" prior to October 8, 1932, must be here considered as established.

** As Refining Co. had deducted $2.40 from Boseman's October pay, he requested and Refining Co. paid him at the time of his discharge, $1.84 refund of the unearned premium, which was the exact proportion of the $2.40 of the unexpired time from October 8 to October 31 (R. 81, 102, 105).

On October 1, November 1, and December 1, 1932 Gulf Oil continued to send its check, from Pennsylvania, to Connecticut General, in Connecticut, in advance payment of the monthly premium for those months for policy G-5039-R (including $3 per month for Boseman's insurance) (R. 124, 152).

On December 22, Gulf Oil mailed, from Pennsylvania, to Connecticut General, in Connecticut, a notice that Boseman's employment had terminated, and that his $4,000 insurance had ended, on October 8 (R. 151-2, 155-6).

On December 27, upon receipt of such notice, Connecticut General marked on its records the cancellation of Boseman's insurance under G-5039-R (as evidenced by Certificate R-23558) as of October 8, 1932 (R. 152, 159).

On December 31, 1932, Connecticut General refunded to Gulf Oil the $9 premium over-payment ($3 per month for October, November and December) by crediting Gulf Oil with $9 (R. 124, 138, 141, 152-154).

G-5039-R (of which Boseman had actual knowledge by its *verbatim* inclusion in his Certificate R-23558, evidencing the terms of the insurance to which he was entitled, R. 58-9):

> "**Incontestability** * * * and no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment *unless* such employee gave written notice of such disability to the Company [Connecticut General] *during the said period of employment or within 60 days thereafter*" (R. 84-85).

Boseman did not notify Connecticut General of his alleged disability by December 8, 1932 (nor indeed for *seventeen months* thereafter); **and consequently his claim became barred on December 8, 1932.***

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* Boseman's long delay was not due to any fault of Connecticut General, for although his Proof of Loss is dated April 25, 1933 (R. 62-3)—more than *six months* after his discharge—he did not even present it to Connecticut General until March 7, 1934—*seventeen months* after his discharge (R. 63-4, 66, 122).

Indeed, it was not until May 22, 1933—*more than seven months* after Boseman's discharge—that Connecticut General first received (and then only indirectly) a copy of a letter dated April 12, 1933, from Boseman's attorney to Refining Co., requesting a form on which to present a disability claim, which form Refining Co. had immediately furnished (R. 65, 95, 112, 113, 123)—so that Boseman's claim had been long barred before either Refining Co. or Connecticut General had the slightest intimation that Boseman even had a disability claim.

Connecticut General required the 60-day limitation clause in order (1) to ascertain promptly the date disability began, and (2) to adjust its annual premium rate on the basis of its actual disability "experience" ("**Premium Rates**", R. 79). Although Boseman was disabled before October 8, 1932, nevertheless when, six months later, Connecticut General fixed its premium rates for a renewal of G-5039-R on April 1, 1933, it knew nothing of Boseman's alleged disability, and could not take his $4,000 claim [for which it had received only $18 premium] into consideration in fixing its rates for the next policy year.

8. On May 6, 1934, Boseman sued Connecticut General for $5,480 ($4,000 insurance, 12% penalty of $480, and $1,000 attorney's fee, R. 49). The District Court held that G-5039-R was a Texas contract, and that the 60 day limitation while valid in Pennsylvania was *void* in Texas (R. 49, 196-197); and it sustained a jury's $5,480 verdict for Boseman, without charging the jury on the subject of the 60 day notice clause, or whether it was a Texas or Pennsylvania contract.*

9. The Circuit Court of Appeals (5th) *reversed* the judgment. It held that Pennsylvania law controlled; and that Boseman's failure to give written notice of his disability within 60 days after his discharge barred his recovery (R. 240-241).

Certiorari was granted presumably on account of an alleged conflict between that decision of the Circuit Court of Appeals (5th) and *Palmetto Fire Insurance Co.* v. *Conn*, 272 U. S. 295.

Summary of Connecticut General and Gulf Oil acts in Connecticut and Pennsylvania.

Connecticut General. Although Connecticut General was authorized to do an insurance business in Texas (R. 88), it has never, since 1917, been qualified to write insurance in Texas, as it had no licensed agents there; has declined all applications for insurance from Texas, and has never written or delivered any policy in Texas (R. 143).

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* It is needless to review the lengthy motions, exceptions, etc., by which Connecticut General raised and preserved the question of Pennsylvania law (R. 166-201).

Connecticut General signed G-5039-R in *Connecticut;* and delivered it to Gulf Oil in *Pennsylvania* (R. 137).

Connecticut General did not issue any certificates to employees; but it mailed the certificates from *Connecticut* to Gulf Oil in *Pennsylvania* (R. 118, 126-7, 131, 139, 150).

Connecticut General treated all insurance (of the "certain employees" insured under G-5039-R) as effective or terminated, solely according to the names, dates and amounts given it *in Connecticut* by notices mailed by Gulf Oil *from Pennsylvania* (R. 141).

Connecticut General paid all insurance claims to the beneficiaries by sending (*from Connecticut* to the Gulf Oil, *in Pennsylvania*) the Connecticut General's own checks payable to the beneficiaries (R. 90, 126, 132, 139).

Connecticut General dealt only with Gulf Oil in *Pennsylvania;* and it never dealt with any of Gulf Oil's subsidiaries or affiliated Companies, nor with any of the employees of either Gulf Oil or any of its subsidiary or affiliated companies; and it refused to accept any claims presented directly to it by any employee (R. 131, 135, 138, 142, 144).

Connecticut General never authorized or requested either Gulf Oil or Refining Co. to act for it in any way (R. 132-3, 140-148); did not concern itself with whether or not Gulf Oil took a "payroll deduction order", nor did it make any inquiry on those subjects, but it entered the employee as insured in accordance with notices received from Gulf Oil (R. 157).

Connecticut General exercised no control or direction over Gulf Oil's method of handling the certificates or the sources or persons from whom Gulf Oil or its subsid-

iaries got the funds with which either to pay the premiums, or to recoup payments which Gulf Oil had already made (R. 133, 138, 140).

Gulf Oil. Gulf Oil applied for, negotiated for, and accepted delivery of, G-5039-R *in Pennsylvania* alone (R. 137).

Gulf Oil sent, *from Pennsylvania*, to Connecticut General, *in Connecticut*, (*a*) all notices of employees who had become insured, or whose insurance was increased or cancelled, (R. 131, 139, 150-1) and (*b*) Gulf Oil's own checks for payment in advance of the monthly premiums under G-5039-R [and received back *in Pennsylvania* from Connecticut General and refunds on account of overpayment of such premiums] (R. 138, 146, 149).

Gulf Oil voluntarily sent all certificates *from Pennsylvania* to Refining Co. in Texas, which, in turn, delivered the certificates to the employees in Texas (R. 97, 102). Gulf Oil sent all Connecticut General's checks to the Refining Co., which delivered the checks to the beneficiaries in Texas (R. 90).

Refining Co.'s acts in Texas were purely on behalf of its own employees, and **not as agent for Connecticut General, with which it had no correspondence or dealings** (R. 93, 94).

Refining Co. made the payroll deduction in Texas from those employees who had signed "payroll deduction orders", and who held certificates (R. 91-93, 97), and Refining Co. then remitted the amounts so deducted to Gulf Oil at Pittsburgh (R. 91).

Refining Co.'s transactions regarding employees' election to take insurance, deductions from the payroll, delivery of certificates to employees and delivery of checks

to beneficiaries, took place in Port Arthur, Texas, *on behalf of its own employees,* but not on behalf of Connecticut General (R. 93, 94, 102).

The C.C.A. said (R. 238);

> "The insurer [Conn. General] did not authorize the employer [Gulf Oil] or its agents [Refining Co.] to solicit Boseman in Texas to become insured. According to the evidence the employer [Gulf Oil] initiated the whole matter, obtaining from Boseman and doubtless from many other employes authority to proceed, and thereafter obtained the insurance on its own and their behalf. Even as to employes who did not consent in advance the reasonable conclusion is that the employer's [Gulf Oil] action was taken for them in anticipation of their ratification, which occurred on their signing a pay deduction order."

SUMMARY OF POINTS DISCUSSED

I. Policy G-5039-R is the only contract of insurance upon which Boseman can rely, and by which alone his rights must be determined. Certificate R-23558 is not a part of that insurance contract.

Under the laws of Pennsylvania Boseman cannot recover on Policy G-5039-R.

II. Policy G-5039-R is a Pennsylvania contract and it is governed by the laws of Pennsylvania.

FIRST POINT.

1. Policy G-5039-R is the only contract of insurance upon which Boseman can rely, and by which alone his rights must be determined. Certificate R-23558 is not a part of that insurance contract.

2. Under the laws of Pennsylvania, Boseman cannot recover on Policy G-5039-R.

1. By the very nature of "group" insurance itself, Policy G-5039-R is the measure—and the *sole* measure—of the respective rights and liabilities of the Connecticut General, Gulf Oil and the "certain employees" insured thereunder (including Boseman).

Certificate R-23558 is not a contract of insurance, nor a part of the policy, but it is merely evidentiary that Boseman *was in fact insured* under G-5039-R. This is so abundantly settled that a marginal citation of the authorities is sufficient.* The C. C. A. said (R. 238):

> "The certificate issued in this case to the insured employe [Boseman] is clearly not the contract of insurance for it

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* *All States Life Ins. Co.* v. *Tillman*, 226 Ala. 245; *Thull* v. *Equitable Life Ass. Soc.*, 40 Ohio App. 486; *Seavers* v. *Metropolitan Life Ins. Co.*, 132 Misc. 719, 230 N. Y. Sup. 366, 370; *Austin* v. *Metropolitan Life Ins. Co.* (La. App.), 142 So. 337, 338-9; *Wann* v. *Metropolitan Life Ins. Co.* (*Texas Comm. Appeals*), 41 S. W. (2d) 50; *Duval* v. *Metropolitan Life Ins. Co.*, 82 N. H. 543; *Hardie* v. *Metropolitan Life Ins. Co.* (Mo. Appeals), 7 S. W. (2d) 746, 747; *McBride* v. *Conn. General Life Ins. Co.*, 14 Fed. Supp. 240, 241; *Gallagher* v. *Simmons Hardware Co.*, 214 Mo. App. 111; *Eisen* v. *John Hancock Life Ins. Co.* (Mo. App.), 91 S. W. (2d) 81; *Provident Life Ins. Co.* v. *Nicholson*, 157 Va. 345; *Steffen* v. *Equitable Life* (*Mo. App.*) 64 S. W. (2d) 302. The contrary view of one of the intermediate Texas Court of Civil Appeals [Beaumont] is not binding on the Federal Courts and may be disregarded.

> says so on its face. The Commission of Appeals of Texas so held of a similar one in *Wann v. Metropolitan Life Ins. Co.*, 41 S. W. (2) 50 . . . Since the certificate is not the contract nor at all necessary to the existence of the insurance (*All-State Life Ins. Co.* v. *Tillman*, 226 Ala. 245) the time and place of its delivery are unimportant to the present inquiry."

Boseman fully recognized the mere evidentiary nature of the certificate, as he offered it, and it was only admitted in evidence, for the sole and limited purpose "of identifying this man [Boseman] as one of the insured under group policy G-5039-**R**" (R. 51).

2. Boseman was discharged, and his employment terminated, on October 8, 1932 (p. 11, *supra*). He did not give to Connecticut General any notice of his disability until ***more than six months*** after his discharge (p. 12, *supra*), although Policy G-5039-**R** and Boseman's individual Certificate both expressly provided that,

> "no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment, ***unless*** such employee gave written notice of such disability to the Company during the said period of employment *or within 60 days thereafter*" (R. 85, 59).

As Boseman *incurred* his permanent total disability ***during his employment***, but did not notify Connecticut General either "during the said period of employment or within 60 days thereafter", the policy expressly provides that, under those circumstances, no claim for such disability shall be paid (R. 85).

Boseman's Petition for *Certiorari* (p. 2), the District Court and the C. C. A. conceded that the 60 day limitation

is perfectly valid under the laws of Pennsylvania (R. 43, 197, 235, 241).*

The C. C. A. held that Policy G-5039-R was a Pennsylvania contract; that the Pennsylvania laws applied; and that consequently Boseman could not recover (R. 240-241). This was in accord with the elementary principles of contract law (*Home Ins. Co.* v. *Dick*, 281 U. S. 397, 406-7, 411).

SECOND POINT.

Policy G-5039-R is a Pennsylvania contract, and it is governed by the laws of Pennsylvania.

The facts are briefly summarized in the margin.**

CONNECTICUT GENERAL delivered Policy G-5039-R *in Pennsylvania;* and thereafter it did not (either directly or

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* This was in accord with the settled rule in Pennsylvania (*Ins. Assn.* v. *Evans*, 102 Pa. 281; *Donnelly* v. *Metropolitan Life Ins. Co.*, 113 Pa. Sup. Ct. Rep. 583; *Masino* v. *Farmers & Mechanics Mutual Ins. Co.*, 235 Pa. 419; *Imperial Fire Insurance Co.* v. *Coos County*, 151 U. S. 452; *American Surety Co.* v. *Bankers Savings & Loan Co.*, 67 Fed. (2d) 803; *Aetna Life Ins. Co.* v. *Moore*, 231 U. S. 543; *Home Building & Loan Assn.* v. *New Amsterdam Casualty Co.*, 45 Fed. (2d) 989; *St. Louis Architectural Iron Co.* v. *New Amsterdam Cas. Co.*, 40 Fed. (2d) 344; *Odegard* v. *General Casualty & Surety Co.*, 44 Fed. (2d) 31).

** 1. A Pennsylvania Co. applied *in Pennsylvania* to a Connecticut Co. for a "group" policy; the application was received and accepted *in Pennsylvania*. The policy (automatically and collectively insuring "certain employees" of the Pennsylvania Co. in *whatever State or foreign country* such employees might be located) was written up and signed *in Connecticut*, and *delivered* to the Pennsylvania Co. *in Pennsylvania* (R. 86, 129, 135-138, 146-7).

2. Each of those widely scattered employees who desired to be included as one of the "certain employees" so insured under

through any agent) do anything in connection therewith anywhere, *except in Connecticut,* where it performed all acts under the policy by receiving through the mail all checks, notices, and claims, and marking its records; and mailing, *in Connecticut,* all individual certificates and its own checks (in payment of claims) to Gulf Oil *in Pennsylvania.*

GULF OIL received initial delivery of this paternalistic "group" insurance policy *in Pennsylvania;* and thereafter all its transactions with Connecticut General were, by mail, between Pennsylvania and Connecticut, by which

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G-5039-**R**, signed and delivered in Texas, *or in whatever State or foreign country he was then located,* a "payroll deduction order" in some form approved by the Pennsylvania Co.; and the names, etc., of the employees so signing up, were furnished to the Pennsylvania Co. *in Pennsylvania* (R. 73, 99-100, 139, 141, 150).

3. The Pennsylvania Co. paid all premiums to the Connecticut Co. *in Connecticut;* sent to the Connecticut Co. a list of names of the "certain employees" so insured, in order that the Connecticut Co., (as required both by the Pennsylvania laws Act April 26, 1929, P. L. 785; Purdon's Penn. Stat. Ann. Title 40, Sec. 532, and by Policy G-5039-**R**, issued in accordance therewith), might send (as it did send to the Pennsylvania Co. *in Pennsylvania*), an individual certificate in respect of each employee so insured, certifying that the employee named therein was insured under G-5039-**R**, (Id. R. 92, 124, 138-9, 146, 149-151, 152).

4. The Pennsylvania Co. sent those evidentiary certificates to its own several agent-subsidiaries **(but not as the agent of the Connecticut Co.)** for delivery; and they were delivered to the respective insured employees—in the case at bar to Texas, where the certificate was there delivered to Boseman (R. 93, 96-7, 101, 106-7, 112, 139).

5. Whenever an employee was discharged, voluntarily terminated his employment, whose insurance was increased or reduced, or who died or became disabled, the Pennsylvania Co

Gulf Oil, not as agent for Connecticut General but in its own interest as policy holder, or acting for convenience for the employees of itself and its subsidiaries, *mailed to Connecticut General, in Connecticut,* Gulf Oil's checks for payment in advance of the monthly premiums, the names of those employees who were to be included among the "certain employees" insured, and notices of employees' deaths, disabilities, claims, discharges and terminations of employment; *received in Pennsylvania,* by mail from Connecticut, individual certificates and the

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mailed *from Pennsylvania,* to the Connecticut Co. *in Connecticut,* a notice of such discharge, termination, increase or reduction, death or disability; and the Connecticut Co. adopted, and marked upon its records *in Connecticut,* the appropriate fact, effective in the name, of the date, and in the respect stated in such notice (R. 141).

6. All insurance or disability claims paid, were paid by the Connecticut Co.'s own checks to the order of the appropriate beneficiary, and mailed and delivered to the Pennsylvania Co. *in Pennsylvania;* which checks the Pennsylvania Co., in turn, acting for its own employees, sent to its subsidiary for delivery to the beneficiary in whatsoever State or foreign country he might at the time be located (R. 90, 126, 132, 139).

7. Connecticut General never dealt with Gulf Oil *except in Pennsylvania;* and it never dealt with any of its subsidiaries, or the employees thereof, at any place whatsoever (R. 131, 135, 138, 142, 144).

Connecticut General never authorized or requested either Gulf Oil or Refining Co. to act for it in any manner whatever; and exercised no control or direction, directly or indirectly, over Gulf Oil's method of securing "payroll deduction orders", premium payments, notices, certificates, claims or the payments thereof (R. 132-3, 138, 140-148); and all acts of both Gulf Oil and Refining Co. were purely on behalf of their own employees and not as agent for Connecticut General, which indeed had no correspondence or other dealings with Refining Co. at any time (R. 93, 94).

Connecticut General's checks to the order of the beneficiaries in payment of claims; and mailed such certificates and checks from Pennsylvania to its own subsidiaries in the various States and foreign countries, for delivery to the employees and beneficiaries there located.

The GULF OIL's receipt in Pennsylvania of the amounts deducted from its own employees' wages in the various States and foreign countries, were acts by the Gulf Oil in its own behalf, and not on behalf of Connecticut General.

On those facts, it was a Pennsylvania Contract (*Mutual Life Co.* v. *Johnson,* 293 U. S. 335, 339; *Mutual Life Ins. Co.* v. *Liebing,* 259 U. S. 209, 214; *Equitable Life Ins. Co.* v. *Clements,* 140 U. S. 226; Story's Conflict of Laws, §§ 242-244, 261, 263; Beale's Conflict of Laws, Vol. 2, p. 1091 § 3324).

The only acts performed by anyone *in Texas* were:

(*a*) Boseman's advance execution of the "payroll deduction order" signifying his wish to be included among the "certain employees" to be insured, and authorizing the "proper" deduction from his wages towards paying therefor;

(*b*) Refining Co.'s $2.40 monthly deduction from Boseman's wages, and its mailing to Gulf Oil in Pennsylvania, the monthly aggregate of such payroll deductions, with notices of the names of the employees authorizing such deductions, and discharged, dying, becoming disabled, or otherwise terminating their insurance or employment, and beneficiaries' claims for death or disability; and

(*c*) Refining Co.'s receipt (by mail from Gulf Oil in Pennsylvania) of individual certificates and Connecticut General's checks in payment of death and disability claims; and their delivery to the beneficiaries, solely "for the aid and benefit of our employees" and *not* "in any capacity to aid or benefit the Connecticut General" (R. 93, 103, 144).

Under all "group" policies:

1. The Employer always acts either (*a*) in its own behalf as the sole policyholder, or (*b*) as a "paternalistic" agent for the benefit of its employees insured thereunder; and **it never acts as agent for the Insurance Company** (C. C. A. (5th) R. 239, and cases there cited).*

2. The Insurance Company **always acts solely in its own behalf,** dealing with the one—and only one person whom it recognizes as the other contracting party,** *i. e.* the Employer—policyholder, to-wit: in this case, Gulf Oil (R. 138-9, 144).

I.

These same acts (thus performed *in Texas* by, or for, Boseman and other Texas employees) were *simultaneously performed* by, or for, thousands of other employees and beneficiaries **in many States and foreign countries.**

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* *Duval* v. *Metropolitan Life,* 82 N. H. 543; *Equitable Life* v. *Hall,* 253 Ky. 450; *Leach* v. *Metropolitan,* 124 Kan. 584, 261 Pac. 603; *Peyton* v. *Metropolitan Life* (La. App.), 148 So. 721; *Connecticut General Life* v. *Speer,* 185 Ark. 615; *State* v. *Connecticut General Life,* 168 S. C. 516; *Dewease* v. *Travelers Ins. Co.,* 208 N. C. 732; *Joiner* v. *Metropolitan Life,* 40 Ga. App. 750; *Barnes* v. *Aetna Life* (Tex. Civ. App.), 7 S. W. (2d) 946.

** Of course the Insurance Company recognizes that the employee (or beneficiary) as the third party for whose benefit the "group" policy has been issued, can sue the Insurance Company (C. C. A. (5th) Opinion, R. 239, and cases there cited). The individual certificate (which by statute the Insurance Company is required to furnish to the Employer for delivery to the employee) is merely evidence that the employee (who has submitted to a monthly wage deduction by his Employer) is in fact one of the employees included among the "certain employees" insured under the policy.

Is the single contract of insurance G-5039-R *simultaneously* a Texas contract for Boseman, a Pennsylvania contract for employees there, a California, Florida, Connecticut or Kentucky contract for employees in those States, and a Borneo or South African contract for employees there?

What about an employee moving from Texas to Pennsylvania, (*a*) immediately *before* death, or (*b*) immediately *after* signing the advance "payroll deduction order"?

Or an employee who signed an advance deduction order in Ohio, then moved to West Virginia where he received his individual certificate and some wage deductions were made, and then moved to Maryland, where he finally became disabled—with different statutes in each of those States as to the disability notices required?

When a single "group" policy insures an army of employees, with its members constantly shifting their individual locations through many States and foreign countries, each with different and often directly contrary laws, and with the premiums and insurance protection increasing from place to place, with the longer service and higher salaries earned, we have the situation described by Mr. Justice Holmes in the *Mixer* case (267 U. S. at 551):

> "The act of becoming a member is something more than a contract,—it is entering into a complex and abiding relation,—and as marriage looks to domicil, membership looks to and must be governed by the law of the state granting the incorporation."

The C.C.A. said (R. 239):

> "Employes' group insurance partly or wholly paid for by the employer resembles to some extent insurance by a

mutual benefit association, which is obtained by joining the association. Although the insurance of the particular new member arises only on his becoming such, his insurance is usually governed *not by the law of the place where he lives and receives his certificate* but of that under which the association operates. The federal courts have been inclined to treat such insurance not as diverse contracts under the particular laws of the several States where members reside but as under the laws of the home State and thus uniform. *Royal Arcanum* v. *Green*, 237 U. S. 532; *Modern Woodmen* v. *Mixer*, 267 U. S. 544; *Minnesota Com. Association* v. *Benn*, 261 U. S. 140."

So that, except for the special agreement between Gulf Oil and Connecticut General as to the Pennsylvania laws, it might well be held that the laws of Connecticut should govern.

II.

A "group" policy may insure 100,000, or more, employees, scattered throughout 48 States (and in many instances foreign countries), where employees are constantly moving from one State to another at various stages in their employment, from before the delivery of the policy until death occurs or until after a disability has happened (involving perhaps four or five separate moves from State to State). Where all transactions between the Insurance Company and the Employer take place exclusively in the States of their respective Home Offices, and, they, in good faith, affirmatively agree upon the law of the Employer's State to govern the contract, such law should govern the performance of the contract for the benefit of the insured employees, rather than to invite the uncertainty and confusion as to the conflicting rights, duties and liabilities of the Insurance Company, Employer

and employee which would inevitably result from any attempt to apply the laws of the States of the employee's residence at one or the other of the various times where he might be residing while different transactions connected with the insurance took place (*Royal Arcanum* v. Green, 237 U. S. 531; *Modern Woodmen* v. *Mixer*, 267 U. S. 544; *Minnesota Assn.* v. *Benn*, 261 U. S. 140; *Mutual Life Co.* v. *Johnson*, 293 U. S. 335; *Swift* v. Tyson, 16 Pet. 1).

Because of the considerations just mentioned, Gulf Oil and Connecticut General agreed that the policy should be governed by the laws of Pennsylvania, which was the State of the Employer's Home Office, and in which State the policy was delivered, from which all premiums were paid, all notices of insurances, increases and reductions, terminations, and claims for death and disability, were mailed to the Insurance Company in Connecticut; and also the State to which the Insurance Company sent all individual certificates and checks for ultimate delivery by Gulf Oil to all beneficiaries, wherever located.

Pennsylvania had a more substantial interest in connection with the contract, and its continued performance for many years, covering thousands of employees located in Pennsylvania and many other States, than even Connecticut; and the agreement of Gulf Oil and Connecticut General that the Pennsylvania laws should govern ought to be carried out (*Mutual Life Ins. Co.* v. *Hill*, 193 U. S. 551; *Seaman* v. *Philadelphia Warehouse Co.*, 274 U. S. 403; *Mutual Benefit Health & Acc. Assn.* v. *Baldridge*, 70 Fed. (2d) 236; *Clark* v. *Gibbs*, 69 Fed. (2d) 264; *Coughlin* v. *S. C. Ry. Co.*, 142 U. S. 101; *Pritchard* v. *Norton*, 106 U. S. 124).

As the C. C. A. aptly said (R. 240):

> "Parties in contracting may adopt as part of their contract the laws of a State other than their own if not contrary to the law or public policy of the State where the contract is made and to be performed. *Mutual Life Ins. Co.* v. *Hill*, 193 U. S. 551."

In this case, the parties adopted the laws of the State of one of the parties, where the contract was delivered and where every act of the contracting parties thereunder, and the performance of the contract, were carried out, except perhaps the casual incident of Gulf Oil (acting in a paternalistic capacity for its own employees) sending the Connecticut General's checks (in payment of claims) for delivery to the beneficiaries in the many States and foreign countries where such beneficiaries lived.

The C. C. A. said (R. 240, 241):

> "Let it be remembered that this policy was applied for, the first premium was paid, and the policy was delivered *in Pennsylvania*, and that ordinarily fixes the place where an insurance contract is considered to be made. . . .
>
> "The insurer [Conn. General] did not go out of Pittsburgh to make this arrangement, and all notices or payments necessary to carry it on are done there. The employe transacts nothing with his insurer in Texas in making and sustaining his insurance, but all his transactions are with the employer and through him with the insurer in Pittsburgh. The business is substantially done in Pittsburgh and the parties may without imputation of evading the law of any other State agree that they are dealing uniformly under the law of Pennsylvania. Boseman in applying to his employer for participation in the policy and by accepting his certificate expressly agreed to the provision requiring notice of claim and it is a material part of the insurance contract. The law of Pennsylvania sustains it, . . . The law which will sustain rather than that which will defeat a plain and fair agreement ought where possible to be applied."

III.

Boseman was not one of the contracting parties. He was merely a third party, for whose benefit the contract was made. He cannot, in one breath, accept the contract and seek the benefits therein conferred, and at the same time, seek to avoid the contract's material provisions, without which the contract would never have been made (*City* v. *Lamson*, 9 Wall. 477; *Western Union* v. *Scarborough*, 68 S. W. (2d) 1027 (Texas Com. App.); *Thompson* v. *Pacific Mills*, 141 S. C. 303; *Magee* v. *Equitable Life*, 62 North Dakota 614); *Kingsland* v. *Missouri State Life*, 66 S. W. (2d) 959 (Mo. App.); *Equitable Life* v. *Hall*, 253 Ky. 450; *Davis* v. *Metropolitan Life*, 32 S. W. (2d) 1034 (Tenn.); *Home Mortgage Co.* v. *Ramsey*, 49 Fed. (2d) 738; *Allan* v. *Moline Plow Co., Inc.*, 14 Fed. (2d) 912). The C. C. A. so held citing seven additional authorities (R. 239).

The C. C. A. thus summed up the situation (R. 240):

> "Whether we look at the case before us in its general aspect or at the special circumstances under which Boseman became insured we are of opinion that **the transaction of insurance occurred in Pennsylvania and not in Texas.** If employes in Texas desire to join in an insurance plan about to be set up or already in operation in Pennsylvania, and either in person or through their employer take steps in Pennsylvania to do so, the laws of Texas do not control it. *Allgeyer* v. *Louisiana*, 165 U. S. 578; *New York* v. *Amringe*, 266 N. Y. 277; *Hartford Ind. Co.* v. *Delta Co.*, 292 U. S. 143.
>
> The conclusion that the laws of Pennsylvania ought to control is much strengthened by the express agreement to that effect of all parties both in the application for the policy, in the policy itself, and in the certificate accepted by Boseman."

IV.

The Texas statute (Rev. Civ. Stat. Art. 5546) relied on by Boseman, attempts to invalidate the contractual requirement for notice within 60 days; and it is subject to exactly the objections which were fatal to the immediately preceding Art. 5545 in *Home Ins. Co.* v. *Dick*, 281 U. S. 397, where it was said (pp. 407, 410)

> "As construed, it also directs the disregard in Texas of contractual rights and obligations wherever created and assumed; and it commands the enforcement of obligations in excess of those contracted for. . . . It purports to create rights and obligations. It may not validly affect contracts which are neither made nor are to be performed in Texas."

REVIEW OF AUTHORITIES.

Allgeyer v. *Louisiana*, 165 U. S. 578, 588, held that Allgeyer's letter of notification mailed in Louisiana to the Insurance Company in New York,

> "was but the performance of an act rendered necessary by the provisions of the contract already made between the parties outside of the State. It was a mere notification that the contract already in existence would attach to that particular property. In any event, the contract was made in New York, outside of the jurisdiction of Louisiana, even though the policy was not to attach to the particular property until the notification was sent."

In the case at bar, neither Gulf Oil, Refining Co. or Boseman mailed in Texas any letter or notification to Connecticut General. Boseman's execution and delivery in

Texas of the "payroll deduction order" to Refining Co. was a mere notification to his Texas employer that he (Boseman) elected to take the benefit of a contract which a different corporation (Gulf Oil) proposed to make in Pennsylvania with Connecticut General. Refming Co. notified Gulf Oil of Boseman's election.

If Louisiana could not punish Algeyer, Texas could not punish Boseman. If Allgeyer's insurance policy was a New York contract, notwithstanding his letter of notification mailed in Louisiana, certainly G-5039-**R** is a Pennslyvania contract; and it was not converted into a Texas contract by the *prior* act of Boseman, who was not even a party to G-5039-**R**.

In *Minnesota Assn.* v. *Benn*, 261 U. S. 140 (1923), this Court held that a Minnesota Assessment association was not "doing business" in Montana, even though it insured Montana members through application forms [which it had furnished to older Montana members for solicitation purposes] signed in Montana, and mailed to Minnesota with the requisite fee; which were accepted there, and certificate of membership, notices, applications for new members, etc. mailed back to the newly accepted Montana member, who in turn mailed his dues, assessments, etc., to Minnesota; and the Association paid claims against it by mailing checks from Minnesota direct to Montana. The Court said (citing numerous cases):

> "We think it cannot be said that the Association was doing business in Montana, merely because one or more members, without authority to obligate it, solicited new members . . . An insurance corporation is not doing business within a state merely because it insures lives of persons living therein, mails notices addressed to beneficiaries at their homes, and pays losses by checks from its home office."

Connecticut General did not, at any time, deal even by mail with Boseman or with anyone else in Texas. If, in the *Benn* case, the Minnesota company was not "doing business" in Montana, how can it be said that Connecticut General's actions made G-5039-R a Texas contract?

In *Aetna Life Ins. Co.* v. *Dunken*, 266 U. S. 389 (1924), the Aetna Life issued to Dunken, in Tennessee, a "term" policy (concededly a Tennessee contract), which provided that Dunken might convert it into a "20-pay" policy upon payment of certain additional premiums. Dunken moved to Texas. While living there he applied by mail from Texas to Aetna Life (in Connecticut) for the promised "20-pay" policy. Aetna Life issued the new "20-pay" policy (with terms exactly as promised in the original "term" policy), and mailed it (through its Tennessee agency) to Dunken in Texas, where Aetna Life was also doing business.

Dunken died in Texas; his Administratrix demanded payment which Aetna Life refused.* She sued, (as here) for the usual statutory 12% penalty and $3,000 attorney's fees (Texas Rev. Civ. Stat. Art. 4746, now Art. 4736).

This Court held that the Texas law did not apply, on the ground that the original "term" policy was a Tennessee contract; that the new policy was issued and delivered *in Texas* in strict compliance with what the Tennessee contract required the Aetna Life to do on demand;

* On the ground that Dunken had never paid the additional premiums required upon conversion. However, the jury and the Texas State court decided that the policy had been ***unconditionally delivered*** to Dunken ***in Texas***, which finding was conclusive in this Court, and foreclosed all question as to Aetna Life's liability for the *face* of the policy (266 U. S. at p. 394).

and that the new policy was controlled by the Tennessee law, and not by Texas law, saying (pp. 399-400):

"The contract contained in the original policy was a Tennessee contract. The law of Tennessee entered into it and became a part of it. The Texas statute was incapable of being constitutionally applied to it since the effect of such application would be to regulate business outside the State of Texas and control contracts made by citizens of other States in disregard of their laws under which penalties and attorney's fees are not recoverable. *New York Life Ins. Co.* v. *Head*, 234 U. S. 149; *Overby* v. *Gordon*, 177 U. S. 214, 222. The second policy here was issued in pursuance of, and was dependent for its existence and its terms upon, the express provisions of the contract contained in the first one. By those provisions, upon the simple application of the insured, the new policy must issue. Nothing was left to future agreement. The terms of the new policy were fixed when the original policy was made. In effect, it is as though the first policy had provided that upon demand of the insured and payment of the stipulated increase in premiums that policy should, automatically, become a twenty payment life commercial policy. It was issued not as the result of any new negotiation or agreement but in discharge of preexisting obligations. It merely fulfilled promises then outstanding; and did not arise from new or additional promises. The result in legal contemplation was not a novation but the consummation of an alternative specifically accorded by, and enforceable in virtue of, the original contract. If the insurance company had refused to issue the second policy upon demand, the insured could have compelled it by a suit in equity for specific performance. See *Tayloe* v. *Merchants' Fire Ins. Co.*, 9 How. 390, 405.

"From these premises it necessarily results that the second policy follows the status of the first for which it was exchanged, and is not subject to the Texas statute relating to penalties and attorney's fees but is controlled by Tennessee law. The judgment below, therefore, in so far as it gives effect to the Texas statute by imposing a penalty of twelve per cent. and allowing attorney's fees, is erroneous, in that the Texas statute cannot constitutionally be applied to a Tennessee contract."

Let us apply that doctrine here.

Policy G-5039-R was initially a Pennsylvania contract. It insured for amounts certain (the respective amounts and eligibility being precisely fixed by the policy itself) all "eligible" employees who elected insurance by signing any form of "payroll deduction order" approved by Gulf Oil.

Dunken and Boseman each signed in Texas, their respective elections: (1) Dunken to receive a tangible physical new policy deliverable in Texas, as had been promised him under his Tennessee contract; (2) Boseman not to receive a tangible physical paper (delivered in Texas as in *Dunken's* case), but merely to be "intangibly included" among the "certain employees" provided for in the existing Pennsylvania contract.

If, in *Dunken's* Case, Texas could not impose its laws upon the new policy sued on, which had been sent from Connecticut and physically delivered to Dunken in Texas, then, *a fortiori,* Texas cannot impose its laws upon G-5039-R (which has *never* been in Texas, was delivered *in Pennsylvania* to Gulf Oil, which still has possession of it *in Pennsylvania,* and upon which contract alone Boseman has sued; (pp. 17-18, *supra*).

In both instances, a Connnecticut insurance company, having made contracts, one in Tennessee and the other in Pennsylvania, has, *verbatim et literatim,* merely complied with that which the persons living in Texas elected to demand under the prior terms of such Tennessee and Pennsylvania contracts—especially as Boseman's signification of his desire to be included among those "certain employees" insured, was given to Gulf Oil even *before* the Pennsylvania contract was made.

In *Hartford Ind. Co.* v. *Delta Co.*, 292 U. S. 143 (1934), the Hartford Co. (a Connecticut corporation doing business in both Tennessee and Mississippi) delivered a fidelity bond in Tennessee to the Delta Co. (a Mississippi corporation likewise doing business both in Tennessee and Mississippi), thereby insuring the honesty of all the Delta Co.'s employees "in any position, anywhere", including its treasurer Harris, who was then located in Tennessee. The bond contained a "contractual limitation" that the Delta Co. must make any claim thereunder *within fifteen months* after the bond terminated.

The treasurer, Harris, removed to Mississippi, and then defaulted in Mississippi between May 9—December 20, 1929. The bond was cancelled and terminated on December 31, 1929.

The Delta Co. mailed its claim *from Mississippi* to the Hartford Co. in Connecticut on June 22, 1931—more than *seventeen* months after such termination, and hence two months after the *fifteen* months' "contractual limitation" had barred recovery.

The fifteen months' limitation was good in Tennessee.

The Mississippi Code (as construed by its highest court, and hence binding in the Federal Courts) provided (1) that any contract insuring property or interests in Mississippi, or made with a resident of Mississippi was a Mississippi contract and deemed to be made in Mississippi (Sec. 5131); and (2) that any "contractual limitation" (departing from the general Mississippi Statute of Limitations) was *absolutely void*, so that all litigants would be subject to the same Statute of Limitations (Sec. 2294).

The Mississippi Court held (*a*) that the bond was a Mississippi contract because it insured against a defalcation taking place in Mississippi (Sec. 5131; p. 148); and

(*b*) that under Sec. 2294, the fifteen months' "contractual limitation" was unenforceable (just as the District Court held in *Boseman's* case).

This Court reversed the Mississippi Court, and held that the Mississippi laws, so construed, deprived the Hartford Co. of "due process of law" in that they attempted to change the obligation of a contract, valid where made, merely because one party thereto was a citizen of Mississippi, and the loss insured against happened to occur in Mississippi and that the ultimate performance of the suretyship bond by paying the defalcation "at most involved only the casual payment of money in Mississippi", saying (pp. 149-150):

> "It is urged, however, that in this case the interest insured was in Mississippi when the obligation to indemnify the appellee matured, and it was appellant's duty to make payment there; and these facts justify the state in enlarging the appellant's obligation beyond that stipulated in the bond, to accord with local public policy. The liability was for the payment of money only, and was conditioned upon three events,—loss under the policy, notice to the appellant at its home office, and presentation of claim within fifteen months of the termination of the suretyship. All of these conditions were of substantial importance, all were lawful in Tennessee, and all go to the obligation of the contract. It is true the bond contemplated that the employee whose faithfulness was guaranteed might be in any state. He was in fact in Mississippi at the date of loss, as were both obligor and obligee. The contract being a Tennessee contract and lawful in that state, could Mississippi, without deprivation of due process, enlarge the appellant's obligations by reason of the State's alleged interest in the transaction? We think not. . . . [a State] may not, on grounds of policy, ignore a right which has lawfully vested elsewhere, if, as here, the interest of the forum has but slight connection with the substance of the contract obligations. Here performance at most involved only the casual payment of money in Mississippi. In such a

> case the question ought to be regarded as a domestic one to be settled by the law of the state where the contract was made. A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated and to convert them for all purposes into contracts of the forum regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract, conflicts with the guaranties of the Fourteenth Amendment. *Aetna Life Ins. Co.* v. *Dunken, supra; Home Insurance Co.* v. *Dick, supra.*"

As there, so here.

There, Mississippi and Connecticut corporations made a valid contract of suretyship in Tennessee, with a "contractual limitation", valid in Tennessee, just as here Connecticut and Pennsylvania corporations made a contract of insurance in Pennsylvania, with a "contractual limitation" valid there.

One of the Mississippi company's many employees (whose honesty was insured), moved to Mississippi, and while engaged there in business for the Mississippi company, (the Connecticut company also doing business in Mississippi) such employee defaulted and the bond was breached in Mississippi; from whence, the Mississippi corporation *belatedly* (as did Boseman) made claim at the Connecticut corporation's Home Office just as Boseman becoming disabled in Texas (thereby acquiring a right of action) *belatedly* presented his claim to the Connecticut General's Home Office.

In each case, the "contractual limitation" was valid in the State where the bond (or policy) was delivered; and in each case, the contingency insured against, occurred in a State where the "contractual limitation" was void.

In the *Delta Co.* case, this Court held that Mississippi could not change the "contractual limitation" contained

in the contract made in Tennessee, merely because the loss insured against occurred in Mississippi and one of the parties to the contract was a citizen of Mississippi.

The same reasoning demonstrates that Texas cannot invalidate the "contractual limitation", valid in Pennsylvania, where G-5039-R was initially a valid Pennsylvania contract, merely because (*a*) the contingency insured against, *i. e.* disability, occurred in Texas to a Texas citizen, and (*b*) the performance of the "group" policy would involve only a casual payment of money by Gulf Oil sending the Connecticut General's check from Pennsylvania to Boseman in Texas.

As pointed out in *Home Ins. Co.* v. *Dick,* 281 U. S. 397, 410, the Connecticut General is not seeking favors of Texas or asking the aid of its Courts to enforce a contract. It only demands that if Texas enforces G-5039-R against it, Texas must not destroy a material clause in the contract, constituting a defense to the suit (*Bradford Elec. Co.* v. *Clapper,* 286 U. S. 145, at 160).

The mere fact that Boseman (in Texas) *was insured* under G-5039-R, would not even subject Connecticut General to a Texas tax upon the premiums it received from Gulf Oil in Pennsylvania (*St. Louis Compress Co.* v. *Arkansas,* 260 U. S. 346); nor, indeed, the mere mailing of checks *from Texas* to Connecticut in payment of premiums (*Provident Savings Assn.* v. *Kentucky,* 239 U. S. 103); and hence, if the State's broad power to tax could not reach such a situation, surely G-5039-R should not be held to be a *Texas* contract, subject to the laws of Texas, in a purely private controversy between two persons, where the sole question was as to

the laws of *which* State should govern the contract (Cf. *Home Ins. Co.* v. *Dick*, 281 U. S. 397, 407-410).*

Palmetto Ins. Co. v. Conn, 272 U. S. 295.

Palmetto Ins. Co. v. *Conn*, 272 U. S. 295 (strongly relied on by Boseman**), involved Ohio's power to tax Palmetto Co. with respect to a policy delivered in Michigan insuring all purchasers of Chrysler automobiles in Ohio.

Palmetto Co. (licensed to do business in Ohio) made an insurance contract in Michigan with the Chrysler

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* It is true that in *Equitable Life Society* v. *Pennsylvania*, 238 U. S. 143 (where the Company was admittedly doing a very large business in Pennsylvania) it was held that Pennsylvania could levy a tax, not only upon the premiums collected *in Pennsylvania*, but upon renewal premiums collected at the Company's New York office upon policies in force in Pennsylvania.

In *Compania De Tobacos* v. *Collector*, 275 U. S. 87, that doctrine was pushed to the extreme limit in holding that the Phillipine Islands could tax a Spanish company doing business in the Phillipines, on account of the premiums which it paid from Spain to a London insurance company under an insurance policy contract not entered into in the Phillipines, but between the Spanish company (in Spain) contracting with the London company (in England) for the insurance of the Spanish company's property in the Phillipines. The decision rested on the slender argument that, as the London company was authorized and *presumably* was doing some business in the Phillipines, it *might possibly require* the activities of its agents in the Phillipines with respect to any adjustment and settlement of losses (if any) on the insured property in the Phillipines.

Both the *Equitable Life* and the *Tobacos* decisions rested on the theory that because the insurance company was doing business in Pennsylvania and the Phillipines, respectively, those

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** Although decided in 1926, this Court has cited the *Palmetto Case* but once in ten years, and then only in a footnote as a "Compare" case; whereas, it has constantly cited the recent cases on which we rely, *i. e. Dunken Case* (8 times), *Home Ins. Co.* v. *Dick* (11 times) and the *Delta* and *Benn Cases* (each once)—although they all dealt with the same problem, viz: the effect of an insurance policy delivered in one State covering a risk in another State.

Sales Corporation of Michigan (hereafter called Chrysler Co.) to insure against fire and theft all purchasers of Chrysler cars—the insurance to become automatically effective from the date the purchaser got the car.

If that were all there were to it, this Court conceded that Ohio could not tax Palmetto Co., saying (p. 304):

> "Manifestly there was nothing in the contract between the plaintiff [Palmetto Co.] and the Chrysler Sales Corporation, without more, that Ohio could lay hold of, even if it insured property in Ohio."

But that was *not* all there was to it. The premiums [paid by Chrysler Co. to Palmetto Co. under the Michigan contract] were, in turn, absorbed in, and added to, the price of each car, which each purchaser had to pay to the dealer selling him the car. If anyone bought a car, he had to pay for the insurance in that way, and get the

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governments had the right to tax them for the privilege of doing business there, even though the measure of the tax was upon something which could not have been taxed had the company not been doing other business in the state. (See *Home Ins. Co.* v. *Dick*, 281 U. S. 397, 408 note.)

Even that doctrine is not applicable here, because Connecticut General, while admitted to do business in Texas, *has never done any insurance business there;* and the present case does not involve the *power* of Texas *to tax* Connecticut General for the privilege of being admitted to the State (although not doing any insurance business therein) measured by premiums paid to it (*in Connecticut*) by Gulf Oil (*from Pennsylvania*) which neither resides in Texas nor is admitted to do business therein.

It would be a very extreme extension of the *Compania De Tobacos* doctrine to say that a corporation admitted to do business within a State can be taxed by a measure determined (for example) by the amount of the total premiums collected throughout the United States, or collected from its "group" business therein, or from "group" business in Pennsylvania, or from "group" business on railroads, oil companies or other forms of activity, bearing no reasonable relationship whatever to its bare admission (without doing business) in the State.

Alaska Packers Assn. v. *Comm'n*, 294 U. S. 532, is so inapplicable here as to require no notice.

insurance, whether he wished it or not, as a part of his bargain; and he thereby *paid in Ohio* the cost of the insurance to the dealer, who, in turn, had already paid for the car by purchasing it from the Chrysler Co.; and then Palmetto Co. mailed a certificate to the purchaser in Ohio.

This Court held that the substance of the transaction was "that *by acts done in Ohio* the purchaser obtains for himself the advantage of insurance that before that moment did not exist . . . and we cannot doubt that the lower Court was right in holding that under such circumstances the State could insist upon its *right to tax*" (p. 305).

The basis of the *Palmetto* decision seems to have been that the purchaser *in Ohio* of a Chrysler car was compelled, whether he wished it or not, to pay a fixed sum for the car, *plus* the insurance thereon; that he was not allowed to purchase the car *without the insurance*, for a *lesser* sum; that the effect of the transaction was that the purchaser *paid in Ohio* the premium for *insurance on his car in Ohio;* and that, under these facts, the insurance company was brought within the *taxing power* of the State.

A great difference between the *Palmetto Case* and Boseman's case is this: Palmetto Co. insured separately each Chrysler car (wherever sold) against fire or theft; and this insurance continued regardless of any future relation of the car to Chrysler Co. It was simply an independent insurance of a car, for which each purchaser was compelled to pay, whether he wished it or not, at the time he bought the car.

It did not contain the unifying principle of "group" insurance, where the Company collectively insures all of an Employer's employees who may care to be included in the "group", and whose insurance only lasts while they remain so employed by the Employer.

The relationship of the employees (while the employment continues) to their Employer and to the insurance company, is totally different from the relationship of thousands of individual purchasers of Chrysler cars to the hundreds of separate dealers or distributors from whom the cars are separately purchased, and with whom no relationship exists after the car is paid for.

Without stopping to consider whether the *Palmetto Case* was wrongly decided and should be overruled, or whether it was merely a "close" case, sustainable under the *Compania De Tobacos Case* (275 U. S. 87, at p. 98; London Co. branch), it is clearly distinguishable here. It merely decided that the "due process" clause did not prevent Ohio's broad *power to tax* from imposing a tax on a corporation admitted to do business in Ohio, in respect of *so much* of the purchase price (which an Ohio purchaser *paid in Ohio*) as had been "earmarked" as included in such price for the purpose of representing the premium previously paid to Palmetto Co. for the insurance protection; which protection did not become effective until the car was *delivered in Ohio* to the purchaser; and where the loss, if any, was to be paid by Palmetto Co. to the purchaser *at his address in Ohio.*

Whatever may be thought of *Equitable Life Society v. Pennsylvania,* 238 U. S. 143, 147, sustaining Pennsylvania's power to "measure" the tax on an insurance company doing a large business within the State, by

the amount of renewal premiums collected in New York from Pennsylvania policyholders, because of the mere *likelihood* that the company would have to attend to various matters in Pennsylvania respecting such policies (paying dividends to policyholders, sending adjusters into Pennsylvania in case of disputes, etc.), or its extension in *Compania De Tobacos*, 275 U. S. at page 98, to sustain the Philippines' *power to tax* on the assumption that the tax there placed upon the assured "must *ultimately* be paid by the *insurer*" who admitted to do business in the Philippines was "presumably" doing business there, and who *might* have to act in the Philippines in the settlement of any losses, it must be conceded (as plainly indicated in the *Equitable Life Society Case*, 238 U. S. at p. 146) that there is a great difference between the measure of a State's admitted *power to tax*, and whether the company is "*doing business*" within a State. Different principles apply.

A fortiori, here, where this case does not involve either the State's power to tax, or what constitutes "doing business" so as to subject a corporation to the State's jurisdiction, but only whether, in a private litigation between two litigants, the State can say that *its* laws shall govern the contract rather than the laws of another State (Cf. *John Hancock Mutual* v. *Yates*, ——— U. S. ——— Dec. 7, 1936).

This Court is so familiar with the distinctions between cases involving the power of a State to tax and the measure of such tax (*Equitable Life Society, Compania De Tobacos* and *Palmetto Cases*) and the "doing business" cases, on the one hand, and on the other hand, the cases involving purely private controversies regarding

the laws of *which* State should control (*Penn, Dick, Dunken, Allgeyer, Delta Co., Mutual Life Co.* v. *Johnson, Liebing, Dodge, Head, Yates,* and *Bradford Electric Cases*), that it is unnecessary further to review them.

Conclusion

The C. C. A's judgment should be affirmed.

B. M. ANDERSON,
MAJOR T. BELL,
WM. MARSHALL BULLITT.

March 2, 1937.

APPENDIX.

I. Texas' Revised Civil Statutes.

"Art. 4736.* In all cases where a loss occurs and the life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company liable therefor shall fail to pay the same within thirty days after demand therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve per cent damages on the amount of such loss together with reasonable attorney fees for the prosecution and collection of such loss."

"Art. 4764a. Section 1. . . .

Sec. 2. No policy of Group Life Insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the Life Insurance Commissioner of the State of Texas and formally approved by him, nor shall such policy be so issued or delivered unless it contains provisions substantially as follows:

(1) . . .

(2) A provision that the policy, the application of the employer, and the individual applications, if any, of the employees insured, shall constitute the entire contract between the parties, and that all statements made by the employer, or by individual employees shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall be used in defense of a claim under the policy, unless it is contained in a written application.

(3) . . .

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* Formerly Art. 4746 (See 266 U. S. 389).

(4) A provision that the Company will issue to the employer for delivery to the employees, whose life is insured under such policy, an individual certificate setting forth a statement as to the unusual protection to which he is entitled, to whom payable, together with provision to the effect that in case of the termination of employment for any reason whatsoever the employee shall be entitled to have issued to him by the Company, without evidence of insurability, and upon application made to the Company within thirty-one days after such termination, and upon the payment of the premium applicable to the class of risk to which he belongs and to the form and amount of the policy at his then attained age, a policy of Life Insurance in any one of the forms customarily issued by the Company, except terms unnamed, in an amount equal to the amount of his protection under such group insurance policy at the time of such termination which policy may or may not contain provisions for disability benefits and provisions for accidental death benefits, at the option of the Company.

(5)

Sec. 3. . . .

Sec. 4. . . .

Sec. 5. . . .

Sec. 6. Except as may be provided in this Act, it shall be unlawful to make a contract of life insurance covering a group in this State (Acts 1931 p. 172, ch. 101, effective May 5, 1931).

"Art. 5054.* Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the

* Formerly Art. 4950 (Id.).

contract was executed, and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same."

"Art. 5056. Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other State or foreign government, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, or collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of, or by any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter * * *"

Art. 5546.* No stipulation in a contract requiring notice to be given of a claim for damages as a condition precedent to the right to sue thereon shall ever be valid unless such stipulation is reasonable. Any such stipulation fixing the time within which such notice shall be given at a less period than ninety days shall be void * * *"

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* Cf. Art. 5545 involved in *Home Ins. Co.* v. *Dick*, 281 U. S. 397.

II. PURDON'S PENNSYLVANIA STATUTES, ANNOTATED, Title 40, Section 532.

"**Standard Provision for Policies of Group Life Insurance.** No policy of group life insurance shall be issued or delivered in this Commonwealth, unless and until a copy of the form thereof has been filed with the Insurance Commissioner and formally approved by him, nor shall such policy be so issued or delivered unless it contains in substance the following provisions:

"(a) - - - - -

"(b) A provision that the policy, the application of the employer, and the individual applications, if any, of the em- the parties, and that all statements made by the employer, or by the individual employees, shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall be used in defense to a claim under the policy, unless it is contained in a written application.

"(c) - - - - -

"(d) A provision that the company will issue to the employer, for delivery to the employees whose life is insured under such policy, an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom payable, together with provision to the effect that in case of the termination of the employment for any reason whatsoever, the employee shall be entitled to have issued to him by the company, without evidence of the insurability, and upon application made to the company within thirty-one days after such termination, and upon the payment of the premium applicable to the class of risks to which he belongs and to the form and amount of the policy at his then attained age, a policy of life insurance in any one of the forms customarily issued by the company,

except term insurance, in an amount equal to the amount of his protection under such group insurance policy at the time of such termination.

"(e) - - - - -

"Except as provided in this act, it shall be unlawful to make a contract of life insurance covering a group in this Commonwealth."